

AMENDED IN ASSEMBLY JULY 16, 1998

AMENDED IN ASSEMBLY JUNE 25, 1998

AMENDED IN SENATE MAY 20, 1998

AMENDED IN SENATE APRIL 28, 1998

SENATE BILL

No. 1878

**Introduced by Senator Kopp
(Principal coauthor: Senator Schiff)**

February 19, 1998

An act to amend Section 190.2 of the Penal Code, relating to murder, ~~and declaring the urgency thereof and calling an election to be consolidated with the November 3, 1998, general election,~~ to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1878, as amended, Kopp. Murder: special circumstances: *an election to be consolidated with the November 3, 1998, statewide general election.*

(1) Existing law, as amended by initiative statute, provides that the penalty for a defendant found guilty of murder in the first degree shall be death, or confinement in the state prison for a term of life without the possibility of parole, where one or more special circumstances have been charged and found to be true. In this connection, existing law provides that a first degree murder committed while lying in wait, and a murder committed in the commission of specified felonies, including kidnapping and arson, are special circumstances for sentencing purposes.

This bill would redefine lying in wait to instead provide that a defendant who intentionally kills a victim by means of lying in wait is subject to these provisions. The bill would also provide that a defendant who is shown to have committed the elements of kidnapping or arson in connection with a murder, is subject to these provisions if there is specific intent to kill, notwithstanding the fact that the kidnapping or arson was committed primarily or solely for the purpose of facilitating the murder.

(2) The bill would state that the Legislature's intent in enacting these provisions is to create a statutory exception to the "independent purpose" doctrine, as established by specified cases.

(3) The bill would provide that it shall become effective only when submitted to, and approved by, the voters of California.

~~(4) The bill would declare that it is to take effect immediately as an urgency statute.~~

(4) Existing provisions of the California Constitution permit the Legislature to enact statutes calling elections, and make those statutes effective immediately upon enactment.

This bill would call an election to be consolidated with the November 3, 1998, statewide general election in order to submit this measure to the voters for approval, if, on August 28, 1998, one or more other measures are to be included in a supplemental ballot pamphlet. Otherwise, the measure would be submitted for approval at the first statewide general election to be held in 2000.

Because local elections officials would be required to undertake additional duties to place this bill on the ballot at the consolidated election, this bill would impose a state-mandated local program.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.



This bill would provide that no reimbursement shall be made from the State Mandates Claims Fund for costs mandated by the state pursuant to this act, but would recognize that local agencies and school districts may pursue any available remedies to seek reimbursement for these costs.

(6) This bill would declare that it is to take effect immediately as an act calling an election.

Vote: ~~2/3~~—majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~—yes.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature in
2 enacting subparagraph (M) of paragraph (17) of
3 subdivision (a) of Section 190.2 to create a statutory
4 exception to the “independent purpose” requirement of
5 People v. Weidert (1985) 39 Cal. 3d 836 and People v.
6 Green (1980) 27 Cal. 3d 1, for the special circumstances
7 of kidnapping and arson, when specific intent to kill is
8 proven.

9 SEC. 2. Section 190.2 of the Penal Code is amended to
10 read:

11 190.2. (a) The penalty for a defendant who is found
12 guilty of murder in the first degree is death or
13 imprisonment in the state prison for life without the
14 possibility of parole if one or more of the following special
15 circumstances has been found under Section 190.4 to be
16 true:

17 (1) The murder was intentional and carried out for
18 financial gain.

19 (2) The defendant was convicted previously of
20 murder in the first or second degree. For the purpose of
21 this paragraph, an offense committed in another
22 jurisdiction, which if committed in California would be
23 punishable as first or second degree murder, shall be
24 deemed murder in the first or second degree.

25 (3) The defendant, in this proceeding, has been
26 convicted of more than one offense of murder in the first
27 or second degree.

1 (4) The murder was committed by means of a
2 destructive device, bomb, or explosive planted, hidden,
3 or concealed in any place, area, dwelling, building, or
4 structure, and the defendant knew, or reasonably should
5 have known, that his or her act or acts would create a
6 great risk of death to one or more human beings.

7 (5) The murder was committed for the purpose of
8 avoiding or preventing a lawful arrest, or perfecting or
9 attempting to perfect, an escape from lawful custody.

10 (6) The murder was committed by means of a
11 destructive device, bomb, or explosive that the defendant
12 mailed or delivered, attempted to mail or deliver, or
13 caused to be mailed or delivered, and the defendant
14 knew, or reasonably should have known, that his or her
15 act or acts would create a great risk of death to one or
16 more human beings.

17 (7) The victim was a peace officer, as defined in
18 Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34,
19 830.35, 830.36, 830.37, 830.4, 830.5, 830.6, 830.10, 830.11, or
20 830.12, who, while engaged in the course of the
21 performance of his or her duties, was intentionally killed,
22 and the defendant knew, or reasonably should have
23 known, that the victim was a peace officer engaged in the
24 performance of his or her duties; or the victim was a peace
25 officer, as defined in the above-enumerated sections, or
26 a former peace officer under any of those sections, and
27 was intentionally killed in retaliation for the performance
28 of his or her official duties.

29 (8) The victim was a federal law enforcement officer
30 or agent who, while engaged in the course of the
31 performance of his or her duties, was intentionally killed,
32 and the defendant knew, or reasonably should have
33 known, that the victim was a federal law enforcement
34 officer or agent engaged in the performance of his or her
35 duties; or the victim was a federal law enforcement
36 officer or agent, and was intentionally killed in retaliation
37 for the performance of his or her official duties.

38 (9) The victim was a firefighter, as defined in Section
39 245.1, who, while engaged in the course of the
40 performance of his or her duties, was intentionally killed,



1 and the defendant knew, or reasonably should have
2 known, that the victim was a firefighter engaged in the
3 performance of his or her duties.

4 (10) The victim was a witness to a crime who was
5 intentionally killed for the purpose of preventing his or
6 her testimony in any criminal or juvenile proceeding, and
7 the killing was not committed during the commission or
8 attempted commission, of the crime to which he or she
9 was a witness; or the victim was a witness to a crime and
10 was intentionally killed in retaliation for his or her
11 testimony in any criminal or juvenile proceeding. As used
12 in this paragraph, “juvenile proceeding” means a
13 proceeding brought pursuant to Section 602 or 707 of the
14 Welfare and Institutions Code.

15 (11) The victim was a prosecutor or assistant
16 prosecutor or a former prosecutor or assistant prosecutor
17 of any local or state prosecutor’s office in this or any other
18 state, or of a federal prosecutor’s office, and the murder
19 was intentionally carried out in retaliation for, or to
20 prevent the performance of, the victim’s official duties.

21 (12) The victim was a judge or former judge of any
22 court of record in the local, state, or federal system in this
23 or any other state, and the murder was intentionally
24 carried out in retaliation for, or to prevent the
25 performance of, the victim’s official duties.

26 (13) The victim was an elected or appointed official or
27 former official of the federal government, or of any local
28 or state government of this or any other state, and the
29 killing was intentionally carried out in retaliation for, or
30 to prevent the performance of, the victim’s official duties.

31 (14) The murder was especially heinous, atrocious, or
32 cruel, manifesting exceptional depravity. As used in this
33 section, the phrase “especially heinous, atrocious, or
34 cruel, manifesting exceptional depravity” means a
35 conscienceless or pitiless crime that is unnecessarily
36 torturous to the victim.

37 (15) The defendant intentionally killed the victim by
38 means of lying in wait.

1 (16) The victim was intentionally killed because of his
2 or her race, color, religion, nationality, or country of
3 origin.

4 (17) The murder was committed while the defendant
5 was engaged in, or was an accomplice in, the commission
6 of, attempted commission of, or the immediate flight
7 after committing, or attempting to commit, the following
8 felonies:

9 (A) Robbery in violation of Section 211 or 212.5.

10 (B) Kidnapping in violation of Section 207, 209, or
11 209.5.

12 (C) Rape in violation of Section 261.

13 (D) Sodomy in violation of Section 286.

14 (E) The performance of a lewd or lascivious act upon
15 the person of a child under the age of 14 years in violation
16 of Section 288.

17 (F) Oral copulation in violation of Section 288a.

18 (G) Burglary in the first or second degree in violation
19 of Section 460.

20 (H) Arson in violation of subdivision (b) of Section
21 451.

22 (I) Train wrecking in violation of Section 219.

23 (J) Mayhem in violation of Section 203.

24 (K) Rape by instrument in violation of Section 289.

25 (L) Carjacking, as defined in Section 215.

26 (M) To prove the special circumstances of kidnapping
27 in subparagraph (B), or arson in subparagraph (H), if
28 there is specific intent to kill, it is only required that there
29 be proof of the elements of those felonies. If so
30 established, those two special circumstances are proven
31 even if the felony of kidnapping or arson is committed
32 primarily or solely for the purpose of facilitating the
33 murder.

34 (18) The murder was intentional and involved the
35 infliction of torture.

36 (19) The defendant intentionally killed the victim by
37 the administration of poison.

38 (20) The victim was a juror in any court of record in
39 the local, state, or federal system in this or any other state,
40 and the murder was intentionally carried out in

1 retaliation for, or to prevent the performance of, the
2 victim's official duties.

3 (21) The murder was intentional and perpetrated by
4 means of discharging a firearm from a motor vehicle,
5 intentionally at another person or persons outside the
6 vehicle with the intent to inflict death. For purposes of
7 this paragraph, "motor vehicle" means any vehicle as
8 defined in Section 415 of the Vehicle Code.

9 (b) Unless an intent to kill is specifically required
10 under subdivision (a) for a special circumstance
11 enumerated therein, an actual killer, as to whom the
12 special circumstance has been found to be true under
13 Section 190.4, need not have had any intent to kill at the
14 time of the commission of the offense which is the basis
15 of the special circumstance in order to suffer death or
16 confinement in the state prison for life without the
17 possibility of parole.

18 (c) Every person, not the actual killer, who, with the
19 intent to kill, aids, abets, counsels, commands, induces,
20 solicits, requests, or assists any actor in the commission of
21 murder in the first degree shall be punished by death or
22 imprisonment in the state prison for life without the
23 possibility of parole if one or more of the special
24 circumstances enumerated in subdivision (a) has been
25 found to be true under Section 190.4.

26 (d) Notwithstanding subdivision (c), every person,
27 not the actual killer, who, with reckless indifference to
28 human life and as a major participant, aids, abets,
29 counsels, commands, induces, solicits, requests, or assists
30 in the commission of a felony enumerated in paragraph
31 (17) of subdivision (a) which results in the death of some
32 person or persons, and who is found guilty of murder in
33 the first degree therefor, shall be punished by death or
34 imprisonment in the state prison for life without the
35 possibility of parole if a special circumstance enumerated
36 in paragraph (17) of subdivision (a) has been found to be
37 true under Section 190.4.

38 The penalty shall be determined as provided in this
39 section and Sections 190.1, 190.3, 190.4, and 190.5.

1 SEC. 3. Section 1 of this act affects an initiative statute
2 and shall become effective only when submitted to, and
3 approved by, the voters of California, pursuant to
4 subdivision (c) of Section 10 of Article II of the California
5 Constitution.

6 ~~SEC. 4. This act is an urgency statute necessary for the~~
7 ~~immediate preservation of the public peace, health, or~~
8 ~~safety within the meaning of Article IV of the~~
9 ~~Constitution and shall go into immediate effect. The facts~~
10 ~~constituting the necessity are:~~

11 ~~In order to clarify as soon as possible the special~~
12 ~~circumstances that can result in a sentence of death or~~
13 ~~confinement in the state prison for a term of life without~~
14 ~~possibility of parole for a person found guilty of murder~~
15 ~~in the first degree, it is necessary that this act go into~~
16 ~~immediate effect.~~

17 SEC. 4. (a) *An election is hereby called to be held*
18 *throughout the state on November 3, 1998. The election*
19 *shall be consolidated with the statewide general election*
20 *to be held on that date. The consolidated election shall be*
21 *held and conducted in all respects as if there were only*
22 *one election and one form of ballot shall be used.*

23 (b) *Notwithstanding Sections 9040, 9043, 9044, 9061,*
24 *and 9082 of the Elections Code, or any other provision of*
25 *law, the Secretary of State shall submit Section 190.2 of*
26 *the Penal Code, as amended by Senate Bill 1878 of the*
27 *1997–98 Regular Session, to the voters at the November*
28 *3, 1998, statewide general election.*

29 (c) *Notwithstanding Section 9051 of the Elections*
30 *Code, or any other provision of law, the Attorney General*
31 *shall prepare and return to the Secretary of State a ballot*
32 *title for Senate Bill 1878 of the 1997–98 Regular Session as*
33 *expeditiously as possible, but not later than two days after*
34 *the effective date of this act.*

35 (d) *Notwithstanding Section 9087 of the Elections*
36 *Code, or any other provision of law, the Legislative*
37 *Analyst shall prepare an impartial analysis of Section 190.2*
38 *of the Penal Code, as amended by Senate Bill 1878 of the*
39 *1997–98 Regular Session, as expeditiously as possible, but*
40 *not later than five days after the effective date of this act.*

1 (e) The Secretary of State shall, if possible, include in
2 the ballot pamphlet, mailed pursuant to Section 9094 of
3 the Elections Code, the information specified in Section
4 9084 of the Elections Code regarding Section 190.2 of the
5 Penal Code, as amended by Senate Bill 1878 of the
6 1997–98 Regular Session. If that inclusion is not possible,
7 the Secretary of State shall publish a supplemental ballot
8 pamphlet regarding the constitutional amendment to be
9 mailed with the ballot pamphlet. If the supplemental
10 ballot pamphlet cannot be mailed with the ballot
11 pamphlet, the supplemental ballot pamphlet shall,
12 notwithstanding Section 9094 of the Elections Code, be
13 mailed at least 14 days before the election.

14 (f) Notwithstanding Section 13115 of the Elections
15 Code, Section 190.2, as amended by Senate Bill 1878 of the
16 1997–98 Regular Session, shall be placed on the ballot
17 following all other ballot measures.

18 (g) Where voting is done by means of voting machines
19 used pursuant to law in the manner that carries out the
20 intent of this section that Section 190.2, as amended by
21 Senate Bill 1878 of the 1997–98 Regular Session, be
22 properly placed before, and duly considered by, the
23 voters at the November 3, 1998, statewide general
24 election, the use of the voting machines is in compliance
25 with this section.

26 SEC. 5. (a) If, on August 28, 1998, Section 190.2 of the
27 Penal Code, as amended by Senate Bill 1878 of the
28 1997–98 Regular Session, is the only measure that would
29 appear on a supplemental ballot pamphlet, then Section
30 190.2 of the Penal Code, as amended by Senate Bill 1878
31 of the 1997–98 Regular Session, may not be submitted to
32 the voters on November 3, 1998, and an election for that
33 purpose may not be called and consolidated with the
34 November 3, 1998, statewide general election to be held
35 on that date. Instead, Section 190.2 of the Penal Code, as
36 amended by Senate Bill 1878 of the 1997–98 Regular
37 Session, shall appear on the first statewide general
38 election that will be held in the year 2000.

39 (b) If, on August 28, 1998, one or more other measures
40 will be included in a supplemental ballot pamphlet, so

1 *that Section 190.2 of the Penal Code, as amended by*
2 *Senate Bill 1878 of the 1997–98 Regular Session, would not*
3 *be the sole measure requiring publication in the*
4 *supplemental ballot pamphlet, then Section 190.2 of the*
5 *Penal Code, as amended by Senate Bill 1878 of the*
6 *1997–98 Regular Session, shall be published in the*
7 *supplemental ballot pamphlet, as provided in Section 4 of*
8 *this act, and Section 190.2 of the Penal Code, as amended*
9 *by Senate Bill 1878 of the 1997–98 Regular Session, shall*
10 *be submitted to the voters at the November 3, 1998,*
11 *statewide general election, as provided in Section 4*
12 *herein.*

13 *SEC. 6. No reimbursement shall be made from the*
14 *State Mandates Claims Fund pursuant to Part 7*
15 *(commencing with Section 17500) of Division 4 of Title*
16 *2 of the Government Code for costs mandated by the*
17 *state pursuant to this act. It is recognized, however, that*
18 *a local agency or school district may pursue any remedies*
19 *to obtain reimbursement available to it under Part 7*
20 *(commencing with Section 17500) and any other*
21 *provisions of law.*

22 *Notwithstanding Section 17580 of the Government*
23 *Code, unless otherwise specified, the provisions of this act*
24 *shall become operative on the same date that the act*
25 *takes effect pursuant to the California Constitution.*

26 *SEC. 7. Section 4 of this act calls an election pursuant*
27 *to paragraph (3) of subdivision (c) of Section 8 of Article*
28 *IV of the California Constitution, and shall therefore take*
29 *effect immediately.*
30